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BEFORE THE FEDERAL ELECTION COMMISSION

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In the matter of

MUR 6339

MCKINLEY FOR CONGRESS AND

SAMUEL STONE, AS TREASURER

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY  
SYSTEM

SENSITIVE

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are

forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters, compared to other high-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6339 as a low-rated matter.

In this matter, the complainant, Derek Scarbro, on behalf of the West Virginia Democratic Party, alleges that David McKinley's principal campaign committee, McKinley for Congress and Samuel Stone, in his official capacity as treasurer ("the Committee"), failed to include employer and occupational information for the majority of individuals in several disclosure reports filed with the Commission. See 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. §§ 100.12, 104.3(a)(4), and 104.7. Specifically, the complainant notes that after the Committee failed to include this information in "reports filed early this cycle," the Commission sent the Committee a Request For Additional Information ("RFAI") on April 29, 2010. The complainant also notes that the Committee failed to include employer and occupational information for nearly two-thirds of the contributors disclosed in its 2010 July Quarterly Report.

1 In his response on behalf of the Committee, Samuel Stone asserts that the Committee is  
2 using its “best efforts” to obtain its contributors’ employer and occupational information.  
3 According to Mr. Stone, the Committee’s solicitation materials contain the “best efforts”  
4 language required by the Commission’s regulations. Specifically, in the Committee’s June 3,  
5 2010 response to the April 29, 2010 RFAI, Mr. Stone explains that all solicitations to potential  
6 contributors include the statement, “Federal law requires us to use our best efforts to collect and  
7 report the name, mailing address, occupation and name of employer of individuals whose  
8 contributions exceed \$200 in a calendar year.” Mr. Stone further notes that if the contributor did  
9 not provide the employer and occupational information, the Committee sends the contributor a  
10 letter asking him or her to provide this information.<sup>1</sup> Mr. Stone asserts that, as of the date of his  
11 response, the Committee has sent out two separate “best efforts mailers” and has filed a “best  
12 efforts” amendment updating the public record with the new information received.<sup>2</sup>

13 According to the Commission’s April 29, 2010 RFAI, the employer and occupational  
14 information provided for eleven contributors disclosed in its 2010 April Quarterly Report was  
15 “not considered acceptable.” See April 29, 2010 RFAI at 3. The Committee responded with a  
16 detailed explanation of its “best efforts” used to obtain the information and supplied additional  
17 information in its Amended 2010 April Quarterly Report. We note, however, that the amended  
18 report should have been filed on or before the Committee’s next regularly scheduled reporting  
19 date of July 15, 2010. See 11 C.F.R. § 104.7(b)(4) (committees who receive additional

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<sup>1</sup> The Committee’s June 3, 2010 response also explains that the Committee sends a stand-alone follow-up letter no later than thirty days after receipt of the contribution requesting the same information. The letter includes a pre-addressed, stamped envelope, and states, “Federal law requires that we obtain the attached information regarding your occupation and employment. Please complete the attached form and return it to us as soon as possible in the enclosed envelope.”

<sup>2</sup> A review of the Commission’s Reports Image Database reflects that the Committee filed an Amended 2010 April Quarterly Report on August 20, 2010, but also that the Commission sent another RFAI regarding contributor identification in the Committee’s 2010 July Quarterly Report on September 14, 2010.

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1 contributor information are required to file amended reports at the same time they file regularly  
2 scheduled reports). Thus, it appears that the Amended 2010 April Quarterly Report may not  
3 have been filed timely, to the extent additional contributor information was received by the  
4 Committee during the reporting period. Finally, although the Commission's September 14, 2010  
5 RFAI notes that the Committee's 2010 July Quarterly Report discloses "a significant increase in  
6 the number of entries for which the occupations and/or employers are not provided," it also  
7 acknowledges that the Committee has previously established that it has been using "best efforts"  
8 to obtain contributor information.<sup>3</sup> See September 14, 2010 RFAI at 5.

9 In light of the fact that the Committee has apparently attempted to use its "best efforts" to  
10 obtain contributor employer and occupational information, coupled with its disclosure of  
11 additional occupation and employer information in its Amended 2010 April Quarterly Report,  
12 and in furtherance of the Commission's priorities and resources, relative to other matters pending  
13 on the Enforcement docket, the Office of General Counsel believes that the Commission should  
14 exercise its prosecutorial discretion and dismiss this matter. See *Heckler v. Chaney*, 470 U.S.  
15 821 (1985).

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<sup>3</sup> The Committee submitted a response to the September 14, 2010 RFAI on October 19, 2010. In addition to reciting the compliance measures previously explained in its June 3, 2010 RFAI response, the Committee's October 19, 2010 response also explains that it now contacts contributors via phone or e-mail to obtain employer and occupation information.

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**RECOMMENDATIONS**

The Office of General Counsel recommends that the Commission dismiss MUR 6339,  
close the file, and approve the appropriate letters.

Christopher Hughey  
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11/10/10  
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BY: \_\_\_\_\_

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